IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 30940 of 2005(G)

OS.91/1968 of I ADDL.M.C.,NEYYATTINKARA
.....

PETITIONER:

ASSARIA JUSTIN MARTIN,
MUKKOLAIKKAL VILAKATHU VEEDU,
JOHN ANANTHA SIDHA CLINIC,PARASSALA DESOM,
PARASSALA VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.B.KRISHNA MANI
SRI.RAHUL VENUGOPAL

RESPONDENT:

PONNAMMA PILLA PRASANNAKUMARI,
AJITHALAYAM, CHENKAL DESOM,
CHENKAL VILLAGE.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 30940 OF 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE JUDGMEN TDT.22.8.03 IN RSA NO.410/03 BEFORE THIS HON'BLE COURT.

EXT.P2 : TRUE COPY OF THE ORDER DT.30.03.2004 IN RP NO.908 OF 2003 PASSED BY THIS HON'BLE COURT.

EXT.P3 : TRUE COPY OF THE APPLICATION DT.15.05.04 IN EA NO.414 OF 2004 BEFORE THE 1ST ADDL. MUNSIFF COURT, NEYYATTINKARA.

EXT.P4 : TRUE COPY OF THE ORDER DT.28.02.04 IN EA NO.414 OF 2004 IN OS NO.91/68BEFORE THE 1ST ADDL. MUNSIFF COURT, NEYYATTINKARA.

EXT.P5 : TRUE COPY OF THE ORDER DT.19.02.04 IN EA NO.462/03 IN OS NO.91/68 BEFORE THE 1ST ADDL. MUNSIFF COURT, NEYYATTINKARA.

EXT.P6 : TRUE COPY OF THE APPLICATION , DT.28.02.05 IN EA NO.175/05 BEFORE THE 1ST ADDL. MUNSIFF COURT, NEYYATTINKARA.

EXT.P7 : TRUE COPY OF THE ORDER DT.02.03.05 IN EA NO.173/05 IN OS 91/68 BEFORE THE 1ST ADDL. MUNSIFF COURT, NEYYATTINKARA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 30940 OF 2005

Dated this the 1st day of August, 2007

JUDGMENT

Ext.P4 order passed by the execution court on Ext.P3 application under Section 144 for redelivery and Ext.P7 order dismissing Ext.P6 application for posting the redelivery application for enquiry are under challenge. Though Sri.B.Krishna Mani, learned counsel for the petitioner has addressed me very strenuously and with reference to the grounds raised in the Writ Petition, I am of the view that the orders are not vitiated to such an extent which may lead to interference by this Court under the visitorial jurisdiction. Of course, the learned counsel is certainly right in saying that the decision under Ext.P4 turns on the decision in Ext.P5. Ext.P5 had nothing to do with the prayer for redelivery. But, on the affidavit in support of Ext.P3 itself it is clear that what has been delivered over is the decree schedule property only. Perhaps the petitioner has a case that damages have been sustained while delivery was effected. But that does not mean that redelivery as per Ext.P3 will be justified. I confirm the impugned orders. However, I make it clear that this judgment will not stand in the way of the petitioner in instituting any suit against the concerned respondents on any genuine and subsisting cause of action which he may have against them.

PIUS C. KURIAKOSE, JUDGE

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